

SENATE BILL 114

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(PRE-FILED)

By: **Chairman, Judicial Proceedings Committee (Departmental - Public
Safety and Correctional Services)**

Requested: November 7, 2001

Introduced and read first time: January 9, 2002

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Procedure - Expungement - Law Enforcement Unit**

3 FOR the purpose of including the State Prosecutor in the definition of "law
4 enforcement unit" as it is used in provisions of law relating to the expungement
5 of certain court or police records; and generally relating to expungement of court
6 and police records.

7 BY repealing and reenacting, with amendments,
8 Article - Criminal Procedure
9 Section 10-101
10 Annotated Code of Maryland
11 (2001 Volume)

12 BY repealing and reenacting, without amendments,
13 Article - Criminal Procedure
14 Section 10-102 through 10-105
15 Annotated Code of Maryland
16 (2001 Volume)

17 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
18 MARYLAND, That the Laws of Maryland read as follows:

19 **Article - Criminal Procedure**

20 10-101.

21 (a) In this subtitle the following words have the meanings indicated.

22 (b) "Central Repository" means the Criminal Justice Information System
23 Central Repository in the Department.

24 (c) (1) "Court record" means an official record of a court about a criminal
25 proceeding that the clerk of a court or other court personnel keeps.

(2) "Court record" includes:

(i) a record of a violation of the Transportation Article for which a term of imprisonment may be imposed; and

(ii) an index, docket entry, charging document, pleading, memorandum, transcription of proceedings, electronic recording, order, and judgment.

(d) "Expunge" means to remove information from public inspection in accordance with this subtitle.

(e) "Expungement" with respect to a court record or a police record means removal from public inspection:

(1) by obliteration;

(2) by removal to a separate secure area to which persons who do not have a legitimate reason for access are denied access; or

(3) if access to a court record or police record can be obtained only by reference to another court record or police record, by the expungement of it or the part of it that provides access.

(f) "Law enforcement unit" means a State, county, or municipal police department or unit, the office of a sheriff, the office of a State's Attorney, THE OFFICE OF THE STATE PROSECUTOR, or the office of the Attorney General of the State.

(g) "Minor traffic violation" means a nonincarcerable violation of the Maryland Vehicle Law or any other traffic law, ordinance, or regulation.

(h) "Police record" means an official record that a law enforcement unit, booking facility, or the Central Repository maintains about the arrest and detention of, or further proceeding against, a person for:

(1) a criminal charge;

(2) a suspected violation of a criminal law; or

(3) a violation of the Transportation Article for which a term of imprisonment may be imposed.

10-102.

(a) A police record or a court record may be expunged under this subtitle.

(b) (1) A court record or a police record that existed before July 1, 1975, and is still maintained, may be expunged under this subtitle.

1 (2) A person who is entitled to the expungement of a court record or a
2 police record that existed before July 1, 1975, may use the procedures for
3 expungement provided under this subtitle.

4 (3) The limitation periods provided in §§ 10-103 and 10-105 of this
5 subtitle begin when the person becomes entitled to expungement of a court record or
6 a police record that existed before July 1, 1975.

7 (4) The custodian of court records or police records that were made
8 before July 1, 1975, and that may be expunged under this subtitle:

9 (i) shall make a reasonable search for a record requested for
10 expungement; but

11 (ii) need not expunge a court record or a police record that is not
12 found after a reasonable search.

13 (c) This subtitle does not apply to:

14 (1) a record about a minor traffic violation;

15 (2) the published opinion of a court;

16 (3) a cash receipt or disbursement record that is necessary for audit
17 purposes;

18 (4) a transcript of court proceedings made by a court reporter in a
19 multiple defendant case;

20 (5) an investigatory file; or

21 (6) a record of the work product of a law enforcement unit that is used
22 solely for police investigation.

23 10-103.

24 (a) A person who is arrested, detained, or confined by a law enforcement unit
25 for the suspected commission of a crime and then is released without being charged
26 with the commission of a crime may:

27 (1) give written notice of these facts to a law enforcement unit that the
28 person believes may have a police record about the matter; and

29 (2) request the expungement of the police record.

30 (b) (1) Except as provided in paragraph (2) of this subsection, a person may
31 not give notice under this subtitle before the statute of limitations expires for all tort
32 claims that arise from the incident.

1 (2) (i) A person may give notice before the statute of limitations
2 expires if the person attaches to the notice a written general waiver and release, in
3 legal form, of all tort claims that the person has arising from the incident.

4 (ii) The notice and waiver are not subject to expungement.

5 (3) The law enforcement unit shall keep the notice and waiver at least
6 until any applicable statute of limitations expires.

7 (4) The person shall give the notice within 8 years after the date of the
8 incident.

9 (c) (1) On receipt of a timely filed notice, the law enforcement unit promptly
10 shall investigate and try to verify the facts stated in the notice.

11 (2) If the law enforcement unit finds the facts are true, the law
12 enforcement unit shall:

13 (i) search diligently for each police record about the arrest,
14 detention, or confinement of the person;

15 (ii) expunge each police record it has about the arrest, detention, or
16 confinement within 60 days after receipt of the notice; and

17 (iii) send a copy of the notice and the law enforcement unit's
18 verification of the facts in the notice to:

19 1. the Central Repository;

20 2. each booking facility or law enforcement unit that the law
21 enforcement unit believes may have a police record about the arrest, detention, or
22 confinement; and

23 3. the person requesting expungement.

24 (d) Within 30 days after receipt of the notice, the Central Repository, booking
25 facility, and any other law enforcement unit shall search diligently for and expunge a
26 police record about the arrest, detention, or confinement.

27 (e) If the law enforcement unit to which the person has sent notice finds that
28 the person is not entitled to an expungement of the police record, the law enforcement
29 unit, within 60 days after receipt of the notice, shall advise the person in writing of:

30 (1) the denial of the request for expungement; and

31 (2) the reasons for the denial.

32 (f) (1) (i) If a request by the person for expungement of a police record is
33 denied under subsection (e) of this section, the person may apply for an order of
34 expungement in the District Court that has proper venue against the law
35 enforcement unit.

1 (ii) The person shall file the application within 30 days after the
2 written notice of the denial is mailed or delivered to the person.

3 (2) After notice to the law enforcement unit, the court shall hold a
4 hearing.

5 (3) If the court finds that the person is entitled to expungement, the
6 court shall order the law enforcement unit to expunge the police record.

7 (4) If the court finds that the person is not entitled to expungement of
8 the police record, the court shall deny the application.

9 (5) (i) The law enforcement unit is a party to the proceeding.

10 (ii) Each party to the proceeding is entitled to appellate review on
11 the record, as provided in the Courts Article for appeals in civil cases from the District
12 Court.

13 10-104.

14 (a) Unless the State objects and shows cause why a record should not be
15 expunged, if the State enters a nolle prosequi as to all charges in a criminal case
16 within the jurisdiction of the District Court with which a defendant has not been
17 served, the District Court may order expungement of each court record, police record,
18 or other record that the State or a political subdivision of the State keeps as to the
19 charges.

20 (b) The District Court may not assess any costs against a defendant for a
21 proceeding under subsection (a) of this section.

22 10-105.

23 (a) A person who has been charged with the commission of a crime, including
24 a violation of the Transportation Article for which a term of imprisonment may be
25 imposed, may file a petition listing relevant facts for expungement of a police record,
26 court record, or other record maintained by the State or a political subdivision of the
27 State if:

28 (1) the person is acquitted;

29 (2) the charge is otherwise dismissed;

30 (3) a probation before judgment is entered, unless the person is charged
31 with a violation of § 21-902 of the Transportation Article or Article 27, § 388A or §
32 388B of the Code;

33 (4) a nolle prosequi is entered;

34 (5) the court indefinitely postpones trial of a criminal charge by marking
35 the criminal charge "stet" on the docket;

1 (6) the case is compromised under Article 27, § 12A-5 of the Code;

2 (7) the charge was transferred to the juvenile court under § 4-202 of this
3 article; or

4 (8) the person:

5 (i) is convicted of only one criminal act, and that act is not a crime
6 of violence; and

7 (ii) is granted a full and unconditional pardon by the Governor.

8 (b) (1) Except as provided in paragraphs (2) and (3) of this subsection, a
9 person shall file a petition in the court in which the proceeding began.

10 (2) If the proceeding began in one court and was transferred to another
11 court, the person shall file the petition in the court to which the proceeding was
12 transferred.

13 (3) (i) If the proceeding in a court of original jurisdiction was appealed
14 to a court exercising appellate jurisdiction, the person shall file the petition in the
15 appellate court.

16 (ii) The appellate court may remand the matter to the court of
17 original jurisdiction.

18 (c) (1) A petition for expungement based on an acquittal, a nolle prosequi, or
19 a dismissal may not be filed within 3 years after the disposition, unless the petitioner
20 files with the petition a written general waiver and release of all the petitioner's tort
21 claims arising from the charge.

22 (2) A petition for expungement based on a probation before judgment
23 may not be filed until either:

24 (i) the petitioner has been discharged from probation; or

25 (ii) 3 years have passed since the probation was granted.

26 (3) A petition for expungement based on a full and unconditional pardon
27 by the Governor may not be filed earlier than 5 years or later than 10 years after the
28 pardon was signed by the Governor.

29 (4) A petition for expungement based on a stet or a compromise under
30 Article 27, § 12A-5 of the Code may not be filed within 3 years after the stet or
31 compromise.

32 (5) A court may grant a petition for expungement at any time on a
33 showing of good cause.

34 (d) (1) The court shall have a copy of a petition for expungement served on
35 the State's Attorney.

1 (2) Unless the State's Attorney files an objection to the petition for
2 expungement within 30 days after the petition is served, the court shall pass an order
3 requiring the expungement of all police records and court records about the charge.

4 (e) (1) If the State's Attorney files a timely objection to the petition, the
5 court shall hold a hearing.

6 (2) If the court at the hearing finds that the person is entitled to
7 expungement, the court shall order the expungement of all police records and court
8 records about the charge.

9 (3) If the court finds that the person is not entitled to expungement, the
10 court shall deny the petition.

11 (4) The person is not entitled to expungement if:

12 (i) the petition is based on the entry of probation before judgment,
13 a nolle prosequi, or a stet, or the grant of a pardon by the Governor; and

14 (ii) the person:

15 1. since the full and unconditional pardon or entry, has been
16 convicted of a crime other than a minor traffic violation; or

17 2. is a defendant in a pending criminal proceeding.

18 (f) Unless an order is stayed pending an appeal, within 60 days after entry of
19 the order, every custodian of the police records and court records that are subject to
20 the order of expungement shall advise in writing the court and the person who is
21 seeking expungement of compliance with the order.

22 (g) (1) The State's Attorney is a party to the proceeding.

23 (2) A party aggrieved by the decision of the court is entitled to appellate
24 review as provided in the Courts Article.

25 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take
26 effect October 1, 2002.